

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8565 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GUJARAT STATE ROAD TRANSPORT CORPN. - Petitioner(s)

Versus

KALPESHKUMAR - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2005

ORAL JUDGMENT

In the present petition, the State Road Transport Corporation has challenged the legality of the award dated 15.11.2002 passed by the Industrial Tribunal, Vadodara. By the impugned award, the Industrial Tribunal

was pleased to direct that the respondent be given compassionate appointment.

2. Father of the respondent was working as a bus conductor with the petitioner-Corporation. He expired on 16.6.92. His son, respondent herein, therefore, applied to the Corporation for being granted appointment on compassionate basis. Since his request was not accepted, he approached the Industrial Tribunal by raising reference being Reference (IT) No.296/2000. The reference was allowed, as noted earlier, directing the Corporation to appoint the respondent on compassionate basis.

3. Before the Tribunal, ST Corporation mainly contended that father of the respondent was dismissed from service and though his dismissal was set aside by the Labour Court, the ST Corporation had challenged the same by filing Special Civil Application No.3717 of 1988 before the High Court which was pending. It was also additionally contended that as per the scheme, the respondent was not entitled to be appointed on compassionate basis. The Industrial Tribunal found that the dismissal of the father of the respondent was set

aside. The Industrial Tribunal, therefore, allowed the reference in favour of the respondent.

4. By the order dated 14.9.2005, this Court had rejected Special Civil Application No.3717 of 1988 filed by the ST Corporation. The controversy regarding the status of the father of the respondent therefore has come to an end. His dismissal stands set aside. On his death, therefore, he was deemed to be in service of the Corporation. The respondent, therefore, is the son of an employee of the Corporation who died in harness. His request for compassionate appointment, therefore, requires to be considered on merits. To that extent, the conclusions in favour of the respondent are not required to be disturbed. There is another aspect of the question of compassionate appointment which cannot be ignored. Even if a person is entitled to be considered for appointment on compassionate basis, such a request has to be considered by the employer on the basis of the policy governing the question of grant of compassionate appointment and as also the financial condition of the family. The Industrial Tribunal without going into these aspects of the matter, gave direction in favour of the respondent asking the petitioner to grant compassionate

appointment to him. Such a direction cannot be sustained. The respondent is entitled only to receive a direction for being considered for grant of compassionate appointment in terms of the policy of the Corporation and the financial condition of the family.

5. In the result, by allowing the petition in part, the award of the Industrial Tribunal is set aside. The petitioner, however, is directed to consider the case of the respondent for compassionate appointment in terms of the policy of the Corporation and the financial condition of the family of the deceased. Such consideration may be concluded within a period of three months from the date of receipt of a copy of this order. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)